IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 227 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

==

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

WINDSOR FOODS LTD.

Appearance:

MR MIHIR JOSHI, Advocate for the Revenue - Appellant
MR RK PATEL with MR B.D. KARIA, Advocates for the assessee - Respondent

----

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 05/03/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income Tax Appellate Tribunal has referred the following three questions for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961:-

At the instance of the Revenue:

1. "Whether on the facts and in the circumstances of the case and in law the Tribunal was right in coming to the conclusion that the assessee was entitled to investment allowance on the amount of Rs. 80,414/- being the additional liability arising due to fluctuation in foreign exchange rate in respect of the payment of outstanding instalments of machinery?"

2. "Whether on the facts and in the circumstances of the case and in law the Tribunal was right in coming to the conclusion that the assessee was entitled to deduction under Section 35B of Rs. 14,105/- for packing credit?"

At the instance of the Assessee:

3. "Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the additional liability on account of exchange fluctuations in repayment of foreign exchange loans from financial institution for purchase of machinery was not revenue expenditure?"

The assessee company filed return of income on 30th August, 1980, in respect of the Assessment Year 1980-81, in response to the notice under Section 143(2) of the said Act. The company had claimed a loss of Rs. 80,414/- on account of exchange fluctuation of repayment of foreign exchange loans obtained from the financial institutions for the purchase of machinery. According to the assessee, the said expenditure was incurred not on acquisition of the asset, but on repayment of loan and was therefore, allowable as a revenue expenditure. According to the assessee, the provisions of Section 43A were therefore, not applicable. The Assessing Officer negatived this contention and relying upon the decision of the Hon'ble Supreme Court in Satlej Cotton Mills Ltd. Vs. CIT, reported in 116 ITR 137, held that the loss on account of exchange rate fluctuation in the instant case, was referable to capital asset and hence, cannot be allowed as a revenue loss. The assessee had put up an alternative contention that if the said amount of Rs. 80,414/- was to be treated as capital expenditure, then investment allowance should be granted on it under Section 32A of the Act. The ITO held that no such investment allowance could be granted on the said amount

because an investment allowance can be granted if the machinery is installed or put to use during the year under consideration. As the machineries were installed much earlier than the previous year of 1979-80, the claim of the assessee could not be accepted, according to the ITO. Therefore, the said amount was added to the total income of the assessee.

The assessee had claimed a weighted deduction under Section 35B of the Act on interest amount of Rs. 14,105/- on packing credit. The ITO however, rejected that claim for weighted deduction. In the appeal the CIT (Appeals) also held that the additional liability of Rs. 80,414/- that had arisen due to fluctuations in the foreign exchange rate, was relatable to the acquisition of the capital asset and hence, it was not allowable as a revenue item. As regard the alternative claim for investment allowance on the said additional liability, it was held that the basic condition laid down for availability of investment allowance was not satisfied in the said previous year because the relevant plant and machinery were installed and put to use long ago and it is only in that earlier previous year that the investment allowance was available to the assessee. The alternative plea was therefore, rejected. As regards weighted deduction under Section 35B on the amount of interest on packing credit (which was shown as Rs. 18,807/- in the order of the ITO and the appellate order), the appellate Authority held that the weighted deduction under Section 35B should be allowed on 25% claimed on interest on packing credit.

In the further appeal before the Tribunal, the Tribunal up-held the view of the lower authorities that the additional liability of Rs. 80,414/- on account of exchange fluctuations in repayment of foreign exchange loans taken for purchase of machinery, was not a revenue expenditure and that it was capital expenditure. It however, held that the final cost of the plant and machinery could be determined only after the last instalment of the repayment of loan was paid because only by that time the actual payment in Indian currency in respect of the cost of machinery purchased on the basis of foreign currency can be ascertained. It was held that the investment allowance if granted in the first year of use on the basis of the conversion of the foreign currency into Indian currency at the then prevailing exchange rate, would require modification on the basis of the correct cost determined finally and looking at the matter from this angle, the additional liability incurred by the assessee was nothing, but a part of the cost of

the plant and machinery, which was required to be varied because of the method of adopting cost of machinery arrived at on the basis of the then prevailing exchange rate. It was therefore held that the additional liability should be treated as a part of the cost of machinery entitled to investment allowance in the year in which the additional liability was incurred because of the fluctuation in the exchange rate, irrespective of the fact that the machineries were installed in the past previous year. The ITO was therefore, directed to modify the assessment accordingly on this count.

As regards the claim of deduction under Section 35B for interest on packing credit, the Tribunal following the earlier decision of the Tribunal in the case of Adydee Corporation, accepted the assessee's claim.

2. Question No.2

The assessee's claim under Section 35B for weighted deduction in respect of the interest amount on packing credit cannot be sustained in view of the decision of this Court in CIT Vs. Jay Industries, reported in 196 ITR 313 and the decision in CIT Vs. Girdharlal Vithaldas, reported in 196 ITR 316. In the latter case, an amount was claimed as weighted deduction on payment of interest on packing credit to the Bank and following the decision in Jay Industries' case (supra), the question was answered against the assessee. In Jay Industries' case, the amount was claimed in respect of certain items of expenditure including expenditure incurred by the assessee by way of payment of interest to the Bank on packing credit. The controversy involved was confined to the interest paid to the Bank on packing credit. It was held that such expenditure by way of payment of interest to the Bank on its packing credit account did not fall under sub-clause (iii) of clause (b) of Section 35B(1) of the Act, because the expenditure was incurred by the assessee in India. It was held that the expenditure incurred in India for supply of goods outside India would not qualify for weighted deduction, as such expenditure was specifically excluded under sub-clause (iii) of Section 35B(1)(b) of the Act. It was further held that such expenditure did not fall under any one of the sub-clauses of clause (b) of Section 35B(1) and therefore, the assessee was not entitled to claim weighted deduction in respect of such expenditure. In this view of the matter, we hold that the Tribunal committed an error in coming to the conclusion that the

assessee was entitled to weighted deduction under Section 35B of the Act, on the amount in question being payment of interest to the Bank on the packing credit account. The question No.2 is therefore, answered in the negative in favour of the Revenue and against the assessee.

3. Question No.3

This question has been referred at the instance of the assessee, who wants the additional liability of Rs. 80,414/- that had arisen due to fluctuation in foreign exchange rate in respect of payments of outstanding instalments of machinery, to be treated as Revenue expenditure. In Satlej Cotton Mills Ltd. (supra), the Hon'ble Supreme Court held that where profit or loss arises to an assessee on account of appreciation or depreciation in the value of foreign currency held by him, on conversion into another currency, such profit or loss would ordinarily be trading profit or loss, if the foreign currency is held by the assessee on revenue account or as a trading asset or as part of circulating capital embarked in the business. But, if on the other hand, the foreign currency is held as a capital asset or as fixed capital, such profit or loss would be of capital nature. It was held that what is necessary to be considered is the true nature of the transaction and whether in fact it has resulted in profit or loss to the assessee. The said decision was rendered in context of the provisions of the Indian Income Tax Act, 1922, since the matter related to the Assessment Years 1957-58 and 1959-60. In our view, if a tax payer incurs obligations and before such obligations have been satisfied by payment there is a variation in the rate of exchange which involves him in a loss on exchange, that loss would be an allowable deduction in the year of payment if, and to the extent to which it is referable to liabilities on revenue account, but not if, and to the extent to which it is referable to liabilities of a capital nature. In the present case, the additional liability arising due to the fluctuation in the exchange rate in the previous year 1979-80 was clearly referable to liabilities of a capital nature and not to liabilities on revenue account. In the previous year in which the liability arose due to fluctuation in the exchange rate, that amount, by which the liability had increased in that previous year, was to be added in the actual cost in the asset in view of the provisions of Section 43A(1) of the Act and obviously therefore, this additional liability was of a capital nature and should never be treated on revenue account.

The Tribunal was therefore right in holding that the said additional liability was not revenue expenditure. The question No.3 is therefore answered in the affirmative against the assessee and in favour of the Revenue.

4. Question No.1

There is no dispute about the fact that the machinery and plant in question were installed and put to use by the assessee many years ago and that the investment allowance which is now sought to be claimed in view of the additional liability due to fluctuation in the foreign exchange rate is not on the basis of any carried forward investment allowance. In other words, whatever investment allowance was due to be made to the assessee in that past relevant previous year when the machinery or plant were installed and put to use, were all claimed and deductions were allowed at the relevant time. The claim is therefore, confined to the additional liability of Rs. 80,414/- which had arisen in the previous year of 1979-80 due to the change in the rate of exchange in repayment of the loans which were taken by the assessee for acquiring the asset in the past. It was in this context contended on behalf of the Revenue that having regard to the scheme of allowing deductions in respect of the investment allowance under Section 32A of the Act, the investment allowance gets quantified during the relevant previous year in which the machinery or plant is installed and put to use and if not put to use in the previous year, in which it was installed, then in the year immediately succeeding that previous year in which it is put to use. It was therefore argued that there was no scope for changing the quantum of the investment allowance once it is worked out in the relevant previous year. The provisions which allow the deduction if not availed due to insufficiency of total income to be carried forward upto 8 years, contained in sub-section (3) of Section 32A, cannot be so construed as to entitle revision of investment allowance in such subsequent years. It was also contended that Section 43A(1) did not warrant any such revision of investment allowance which was already quantified in the past relevant year.

The learned Counsel appearing for the assessee strongly contended that the investment allowance was to be worked out on the basis of the actual cost of the machinery or plant as provided under Section 32A. In cases where there is additional liability due to fluctuation in the exchange rate, the actual cost is to be revised and if as a result of that revision the

assessee becomes entitled to a higher investment allowance, there would be no justification for denying the same in the previous year in which the additional liability had arisen. It was contended that any such additional liability arising due to fluctuation in the exchange rate which has the effect of increasing the actual cost as per Section 43A(1) must relate back to the actual cost on the basis of which the investment allowance was worked out in the past relevant previous year and the investment allowance should stand revised accordingly on the basis of the revised actual cost. The deduction in respect of such additional investment allowance should be allowed in the previous year in which additional liability arose, subject to the provisions of sub-sections (3) and (4) of Section 32A of the Act. It was further contended that in the years prior to the previous year in which the additional liability arose, the assessee could not have claimed the additional investment allowance since he could not have created a reserve in respect of such additional allowance. It was submitted that the assessee could at that time create reserve only qua the investment allowance calculated on the basis of the actual cost in the year of user. However, because of Section 43A(1), since the actual cost increases in the previous year of fluctuation, the assessee could now create a reserve having become entitled to the additional investment allowance on the increased portion of the actual cost. It was submitted that the provisions of Section 32A read with Section 43A should be liberally construed. Reliance was placed by the learned Counsel on the decision of the Karnataka High Court in CIT Vs. Widia (India) Ltd., reported in 193 ITR 475, in which it was held that the assessee was entitled to investment allowance on the cost of assets as enhanced due to fluctuations in foreign currency rates, relying upon its earlier decision in CIT Vs. Motor Industries Co.Ltd., reported in 173 ITR 374, the ratio of which, according to the Court, concluded the said question. It will be noted that the question had arisen in that earlier case with regard to the proposal to withdraw the depreciation allowance on the extra liability incurred by the assessee as a result of fluctuation in the market rate of exchange. The ratio of the decision in Motor Industries Co.Ltd.. (supra) in context of the depreciation allowance was followed by the Karnataka High Court without any discussion on the matter in Widia (India) Ltd. by holding that "the first question is covered by the decision of this Court in CIT Vs. Motor Industries Ltd.". That first question related to investment allowance and was not in respect of depreciation allowance.

5. Section 32A(1) which falls for our consideration, to the extent it is relevant in the context of the contentions raised, reads as under:-

"32A. Investment allowance.

(1) In respect of a ship or an aircraft or machinery or plant specified in sub-section (2) which is owned by the assessee and is wholly used for the purposes of the business carried on by him there shall, in accordance with and subject to the provisions of this section be allowed a deduction, in respect of the previous year in which the ship or aircraft was required or the machinery or plant was installed or, if the ship, aircraft, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year, of a sum by way of investment allowance equal to twenty-five per cent of the actual cost of the ship, aircraft, machinery or plant to the assessee:

xxx xxx"

If we analyse this provision, the following four separate aspects are reflected.

Firstly, this provision identifies the ship, aircraft machinery or plant to which it applies and these are specified in sub-section (2). Therefore, the provision will apply to these specified assets only.

Secondly, the provision lays down as to when it will operate in respect of such ship, aircraft, machinery or plant and provides that it would be attracted when these are owned by the assessee and wholly used for the purposes of the business carried on by the assessee.

Thirdly, it provides as to how the deduction is to be worked out and lays down that the deduction will be allowed of a sum by way of investment allowance equal to 25% of the actual cost of such machinery or plant to the assessee. This quantification lays down the limit upto which the deduction of investment allowance can be allowed.

Finally, the provision clearly lays down the previous year in respect of which such deduction can be allowed in accordance with and subject to the provisions

of this Section, and such previous year can be the year in which the machinery or plant which is owned by the assessee and is wholly used for the purposes of the business carried on by him, was installed or if the machinery or plant is first put to use in the immediate succeeding previous year, then that previous year.

It is thus, clear that the amount of investment allowance equal to twentyfive per cent of the actual cost of the machinery or plant gets quantified in the relevant previous year in which such machinery or plant was installed and put to use. The investment allowance so fixed would be allowed as a deduction in the previous year in which the machinery or plant is installed, provided the same is used for the purpose of business in the year of installation. However, if the machinery or plant is first put to use in the immediate succeeding previous year, the investment allowance would be allowed in such previous year. If the machinery or plant is first put to use later than the previous year immediately succeeding the previous year of its installation, the right to claim the investment allowance would be completely lost. In that sense the investment allowance to which the assessee can be entitled under Section 32A is one time allowance and it is not an allowance which is recurring - that is to say, an allowance which is required to be calculated year after year. Therefore, the actual cost of machinery or plant in the previous year in which it is installed and first put to use, would be the basis of working out the investment allowance at an amount equal to 25% of that actual cost. The amount of investment allowance so worked would get crystalised in that year and thereafter the only question that remains is whether the investment allowance which is so worked out and to which the assessee is entitled for claiming deduction, should be actually allowed by way of deduction. As noted above, Section 32A(1) provides that the deduction should be allowed in accordance with and subject to the provisions of Section 32A. That would happen only after the investment allowance admissible to the assessee is worked out on the basis of the actual cost at 25% thereof. The conditions laid down in sub-section (4) have also to be satisfied before such deduction is allowed and one of the important conditions is that of creation of a reserve account by the assessee. The assessee who has sufficient total income, can be allowed deduction of the full amount of investment allowance in the very first year of his entitlement, namely in the first previous year in which the machinery or plant was put to use. However, if there is no sufficient total income and the deduction cannot

therefore be actually allowed in that previous year, sub-section (3) of Section 32A enables the assessee to carry forward the investment allowance and claim deduction in the next assessment year, if there is sufficient total income from which such deduction can be allowed. It will be seen from the provisions of sub-section (3) of Section 32A that the basis of allowing the deduction is the full amount of investment allowance which is already quantified during the relevant previous year on the basis of the actual cost to the assessee of the machinery or plant in that year, when it was installed and put to use. If the total income is sufficient to absorb the deduction of the allowance and the condition regarding creation of the reserve is satisfied by the assessee, then the deduction would be allowed in that assessment year. Every time the question arises under sub-section (3) of Section 32A of allowing the deduction out of full amount of the investment allowance or the remaining part thereof depending upon the total income available, the question of creation of reserve would go hand in hand with it as a condition of allowing the deduction of the investment allowance in that assessment year. Under sub-section (4) of Section 32A, an assessee can be allowed deduction only if an amount equal to 75% of the investment allowance to be actually allowed is debited to the profit and loss account of any previous year in respect of which the deduction is to be allowed under sub-section (3) or any earlier previous year being a previous year not earlier than the year in which the machinery or plant was installed or was first put to use, and credited to a reserve account to be utilised as indicated therein. From the wordings of this provision, it is sought to be contended that the full investment allowance already quantified in the relevant previous year was to be worked out afresh for the purpose of creating a reserve in subsequent years. Such a construction of sub-clause (ii) of sub-section (4) of Section 32A is not at all warranted. If in the relevant previous year there is no total income or no sufficient total income to cover up the full investment allowance and consequently no reserve can be created, there would arise no question of allowing any deduction in that initial previous year of the full amount of investment allowance. In the next succeeding year if there is a total income then, to the extent it can cover up the investment allowance out of the full amount of investment allowance or its remaining part, and a reserve can be created, the investment allowance would be actually allowed in that assessment year and the balance of the investment allowance if any still outstanding after that exercise, will be be carried

forward to the following assessment year and so on upto the maximum of eight assessment years immediately succeeding the assessment year relevant to the previous year in which machinery or plant was installed or first put to use. Therefore, the expression `to be actually allowed' in clause (ii) of Section 32A (4) has reference to the full amount of the investment allowance or that portion of the full amount of the investment allowance which is to be actually allowed in the assessment year, which exercise is to be done in accordance with sub-sections (3) and (4) of Section 32A only till the full amount of the investment allowance gets deducted or the said period of eight assessment year expires, whichever is earlier. The provisions of sub-section (3) (ii) of Section 32A enabling the outstanding balance of the investment allowance being carried forward or the provisions of sub-section (4) imposing a condition of creating a reserve before the deduction can be actually allowed in respect of the relevant portion of the investment allowance, will in our view, have no bearing on the quantum of the full investment allowance already fixed at an amount equal to 25% of the actual cost, which exercise was required to be undertaken in the relevant previous year in which the machinery or plant were installed and first put to use, crystalising the benefit available in terms of that amount under Section 32A(1). The provisions of sub-section (3) and sub-section (4) operate consequent upon the working out of the full amount of the investment allowance under Section 32A(1) and the actual deduction of allowance takes place in consonance with the provisions of sub-section (3) and sub-section (4) of Section 32A.

6. That takes us to the provisions of Section 43A of the Act on the basis of which the learned Counsel for the assessee has contended that the `actual cost' concept under Section 32A takes its colour from the fluctuations in the exchange rate and the resultant increased liability, is required to reflect in the `actual cost' under the said provision. Section 43A which is so pressed in service, reads as under:-

"43A. Special provisions consequential to changes in rate of exchange of currency.

(1) Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset from a country outside India for the purposes of his business or profession and, in

consequence of a change in the rate of exchange at any time after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability aforesaid is so increased or reduced during the previous year shall be added to, or, as the case may be, deducted from, the actual cost of the asset as defined in clause (1) of Section 43 or the amount of expenditure of a capital nature referred to clause (iv) of sub-section (1) of Section 35 or in Section 35A or in clause (ix) of sub-section (1) of Section 36, or, in the case of a capital asset (not being a capital asset referred to in Section 50), the cost of acquisition thereof for the purposes of Section 48, and the amount arrived at after such addition or deduction shall be taken tobe the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid.

xxxx xxxx xxx

xxxxxxx xxxx xxxxxx xxx

(2) The provisions of sub-section (1) shall not be taken into account in computing the actual cost of an asset for the purpose of deduction on account of development rebate under Section 33."

It was contended on the basis of this provision that sub-section (1) of Section 43A is expressly excluded in its application for the purpose of deduction on account of development rebate under Section 33 and it must therefore follow that since no such provision is repeated for Section 32A, the provisions of sub-section

(1) of Section 43A should be given their full play in context of the provisions of Section 32A, thereby enabling the assessee to have additional relief in the form of revised investment allowance, which was relatable to the additional liability which had arisen due to the fluctuation in the exchange rate.

7. The expression "actual cost" is defined under Section 43(1) to mean the actual cost of the asset to the assessee as worked out in the manner indicated therein in context of different contingencies mentioned. It is provided under Section 43A(1) that where there is fluctuation in the exchange rate which increases or reduces the liability to pay the cost of the asset after it is acquired from a foreign country, liability so increased or reduced during the previous year is to be added or deducted from the actual cost of the asset as defined in Section 43(1) of the Act. This would mean that in the previous year of change in the exchange rate where for example liability to pay has increased, there will be made an addition to the figure of the actual cost of the asset which will stand revised accordingly in that previous year. Therefore, where the cost of the asset is already paid prior to the date of fluctuation in exchange rate, there would be no liability existing immediately before the date on which the change in the exchange rate took effect and therefore, there would be no occasion to make any addition to the actual cost of the asset. The extent of addition (or reduction as the case may be), to the actual cost of the asset is directly connected with the liability outstanding immediately prior to the date of fluctuation in the exchange rate. Thus, if on such date only a part of the cost of the acquired asset is outstanding for payment, the exchange rate fluctuation will be worked out in the context of only that part of the outstanding payment and the addition to the actual cost will be made accordingly in that previous year in which the change has taken place. There is therefore, no scope for revising the cost actually met prior to the date of the fluctuation in the exchange rate. It is only after the date of such fluctuation that the question can arise of revising the actual cost in the manner provided in Section 43A(1) during the previous year in which the fluctuation takes place. The actual cost so revised in the previous year will have relevance to the deductions which may be allowable in respect of that previous year and cannot relate back to the earlier previous year so as to retrospectively change the actual cost that prevailed in that year and could not have been altered by foreseeing any change in the exchange rate. In other words, the change in exchange rate cannot project back to

the period prior to the date on which such change took effect. The deduction of investment allowance can be allowed in respect of the previous year in which the machinery was installed or first put to use. If the deduction becomes allowable in that relevant previous year, the full investment allowance is to be worked out on the basis of the actual cost of the machinery or plant to the assessee at that relevant time. That quantification of the amount at 25% of the actual cost to be allowed by way of deduction as investment allowance got crystalised on the basis of the actual cost and no change can be made therein for that previous year on the basis of any fluctuation that takes place in the exchange rate in the subsequent years which will have impact only on the liability to pay as it stands immediately prior to the date of fluctuation in such subsequent year. The fact that the investment allowance is carried forward under sub-section (3) or that the reserve can be created in any subsequent assessment year due to insufficiency of profits in the earlier years will not alter this situation. In our view therefore, no question of revising the full amount of the investment allowance which was already worked out in the relevant previous year can ever arise by virtue of any subsequent fluctuation in the exchange rate which brings about a change in the liability that existed immediately before the date on which the change in rate of exchange takes effect. The additional liability is to be added to the actual cost only in that previous year in which it arises and the actual cost so revised will be operative in respect of the benefits which are required to be calculated in that previous year. Since the investment allowance was already worked out on the basis of the actual cost and that quantified allowance cannot be varied by giving a back effect to such subsequent alteration in the exchange rate, there can arise no question of working out any additional investment allowance in such subsequent year in which the fluctuation takes place. The Tribunal was therefore clearly in error in holding that the assessee was entitled to deduction of investment allowance on the amount of Rs. 80,414/- being the additional liability that arose due to fluctuation in foreign exchange rate in respect of the payments of outstanding instalments of machinery.

8. As noted above, the Karnataka High Court in Widia (India) Ltd. (supra) where it was concerned with the question whether the investment allowance on the enhanced cost of allowance due to foreign currency fluctuation rate could be allowed, answered that question in favour

of the assessee by observing that "the first question is covered by the decision of this Court in CIT Vs. Motor Industries Co.Ltd., reported in 173 ITR 374". In Motor Industries Co.Ltd., as noted above, the Karnataka High Court was not concerned with the question of investment allowance. The question before the High Court was whether the assessee was entitled to the benefit of Section 43A on the increase in liability on the last day of the accounting year due to fluctuation in the currency rates in respect of foreign currency loan obtained for purchase of machinery from abroad, and this was in context of the proposal to withdraw the depreciation allowed by the Income Tax Officer on the extra liability incurred by the assessee as a result of periodical variation in the market rate of exchange. Therefore, these decisions do not help in construing the provisions of Section 32A in context of the provisions of Section 43A of the Act.

Much reliance was placed on the decision of the Supreme Court in CIT Vs Arvind Mills Ltd., reported in 193 ITR 255, by the learned Counsel for the assessee, in support of his contention that all allowances referred to in sub-section (1) of Section 43A will have to be based on the adjusted actual cost and therefore, the investment allowance should be recomputed on the basis of the adjusted actual cost. For the reasons which we have already given, no such result can be achieved of disturbing the quantification already made in the relevant previous year, of the full amount of investment allowance on the basis of the actual cost in that previous year. When the Supreme Court holds that all allowances including development rebate or depreciation allowance or other type of deductions referred to in sub-section (1) of Section 43A would have to be based on the adjusted actual cost and that sub-section (2) intercedes to put in a caveat by providing that sub-section (1) should not be applied for the purpose of development rebate, it refers to all such allowances or other types of deductions which are required to be worked out in the previous year in which the actual cost is adjusted because of the change in liability due to the fluctuation in the exchange rate. Whether allowance is permissible and to what extent it is permissible in the previous year of such fluctuation would depend on the provisions under which it is to be worked out. The basic requirements laid down in the relevant provisions of the Act for the eligibility for such allowances and for working out the allowances as also in respect of the previous year for which they can be allowed, do not stand altered by sub-section (1) of Section 43A retrospectively

on any fluctuation in the exchange rate occurring. The provision is relevant only in context of the previous year in which the change occurs and the actual cost is therefore adjusted, which will have impact only in respect of the allowances and deductions which are permissible in that previous year. This is clear even from the observations made by the Supreme Court in the said decision to the effect that Section 43A lays down firstly that the increase or decrease in liability should be taken into account to modify the figure of actual cost and secondly, such adjustment should be made in the year in which the increase or decrease in liability arises on account of fluctuation in the rate of exchange. Therefore, there would arise question of making any adjustment in any previous year which is prior to the year in which the increase or decrease in liability arises on account of such fluctuation. Therefore, given its full play, the provision of Sec. 43A(1), notwithstanding the specific provision regarding development rebate made in sub-section (2), will not have any impact on the full amount of the investment allowance already quantified on the basis of the actual cost in the relevant previous year which was much prior to the year in which the additional liability arose due to fluctuation in the exchange rate.

Reliance placed by the learned Counsel for the assessee on the decision in the case of CIT Vs. Surama Tubes (P) Ltd. - 201 ITR 124 is wholly misconceived because in that matter it was held that the machines which were lying idle and were kept for installation were installed only in the year under reference and therefore, the Tribunal was right in concluding that the machinery so installed was new as the installation was completed during the accounting year relevant to the assessment year.

Reliance was placed on the decision of the Supreme Court in CIT Vs. J.K. Hosiery Factory, reported in 159 ITR 85, in support of the proposition that in case of doubt the assessee is entitled to an interpretation which is favourable to him. There can be no dispute about this proposition. In the present case, there arises no doubt as regards the interpretation of the provisions of Section 32A(1) and Section 43A. The language of these provisions is clear enough to warrant the only conclusion to which we have arrived at, leaving no scope for any doubt as regards the interpretation of these provisions.

In view of what we have said above, question No.1

is answered in the negative in favour of the Revenue and against the assessee.

The reference stands disposed of accordingly with no order as to costs.

----

*/Mohandas